

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TIFFANY SARGENT, BAILEY
CRYDERMAN, SAMANTHA L. IGNACIO
(formerly SCHNEIDER), VINCENT M.
IGNACIO, HUONG (“ROSIE”) BOGGS, and
JACQULYN WIEDERHOLT on behalf of
themselves and all others similarly situated,

3:13-cv-00453-LRH-WGC

ORDER

Plaintiffs,

v.

HG STAFFING, LLC; MEI-GSR
HOLDINGS, LLC d/b/a GRAND SIERRA
RESORT; and DOES 1 through 50, inclusive,
Defendants.

Before the court is Plaintiffs’ motion to reconsider this court’s January 12, 2016 order. ECF No. 194. Defendants have filed a response (ECF No. 198), to which Plaintiffs replied (ECF No. 201). The court finds that the Ninth Circuit’s unpublished memorandum disposition that Plaintiffs cite as the basis for reconsideration is inapposite to the issue that the court considered in its order (ECF No. 172) and that relief under Federal Rule of Civil Procedure 60(b) is therefore unwarranted. Accordingly, the court will deny the instant motion.

I. Background

Plaintiffs are current and former employees of Defendants HG Staffing, LLC and MEI-GSR Holdings, LLC. Plaintiffs allege that Defendants’ wage practices resulted in several violations of the Fair Labor Standards Act and Nevada law.¹ See ECF No. 47. Defendants

¹ Specifically, Plaintiffs allege that Defendants, among other illegal practices, engaged in “shift jamming,” whereby an employee works an eight-hour shift and then begins to work his next

1 eventually moved for partial summary judgment on all but one² of Plaintiffs' wage-based state-
 2 law causes of action, arguing that Nevada's wage laws under NRS Chapter 608 do not create a
 3 private right of action. ECF No. 135 at 9. After reviewing the relevant case law from the Nevada
 4 Supreme Court and other courts within this district, this court agreed with Defendants and
 5 granted their motion. ECF No. 172. Plaintiffs now move for reconsideration of that order.

6 **II. Legal standard**

7 A party may move for relief from a final judgment or order under Federal Rule of Civil
 8 Procedure 60(b). A motion under Rule 60(b) is an "extraordinary remedy, to be used sparingly in
 9 the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of*
 10 *Bishop*, 229 F.3d 887, 890 (9th Cir. 2000). A district court may reconsider a prior order where
 11 the court is presented with newly discovered evidence, an intervening change of controlling law,
 12 manifest injustice, or where the prior order was clearly erroneous. Fed. R. Civ. P. 60(b)(1)-(6);
 13 *United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998); *School Dist. No. 1J, Multnomah*
 14 *County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

15 **III. Discussion**

16 Plaintiffs motion is solely premised on the Ninth Circuit Court of Appeals' recent
 17 unpublished decision in *Evans v. Wal-Mart Stores, Inc.*, 656 F. App'x 882 (9th Cir. 2016).
 18 There, the Ninth Circuit reviewed and ultimately reversed a summary-judgment order issued by
 19 another court within this district. *See Evans v. Wal-Mart Stores, Inc.*, No. 2:10-CV-1224-JCM-
 20 VCF, 2014 WL 298632 (D. Nev. Jan. 24, 2014). As in this case, the *Evans* plaintiffs claimed that

21 eight-hour shift within less than twenty-four hours of the beginning of his first shift.
 22 Alternatively stated, shift jamming occurs when an employee does not have at least sixteen
 23 consecutive hours off from work between two eight-hour shifts. Because Nevada law requires
 24 overtime pay for certain employees that work "[m]ore than 8 hours in any workday[.]" NRS
 25 608.018(1)(b), which is defined as "a period of 24 consecutive hours which begins when the
 26 employee begins work[.]" NRS 608.0126, employees subject to shift jamming are entitled to
 overtime pay for the second-shift hours that fall within the initial twenty-four-hour period.
 Plaintiffs, however, allege that they did not receive overtime pay for these hours. ECF No. 47 at
 6-7.

27 ² Defendants did not move for summary judgment on Plaintiffs' fifth cause of action, failure to
 28 pay minimum wage, acknowledging that NRS 608.260 does create a private right of action. ECF
 No. 135 at 9.

1 their employer engaged in shift jamming (*see supra* n. 1) and thus deprived them of overtime pay
2 that they had earned. *Id.* at *4. Plaintiffs here argue that the *Evans* district court held that there
3 was no private right of action for statutory overtime under NRS 608.018 and that the Ninth
4 Circuit reversed the court on this specific point. ECF No. 194 at 5. Plaintiffs thus argue that this
5 court, in granting Defendants summary judgment on Plaintiffs’ state-law causes of action, relied
6 “upon a line of District Court opinions, which now conflict with the holding of the Ninth Circuit
7 in *Evans*.” *Id.* at 7.

8 After reviewing the *Evans* district court order and Ninth Circuit memorandum
9 disposition, the court finds that the case does not address the issue of whether NRS Chapter 608
10 creates a private right of action. The sole issue before the district court was whether statutory
11 waiting-time penalties apply only to contractually agreed-upon wages or also to statutorily-
12 required overtime pay.³ *Evans*, 2014 WL 298632, at *4–5. Under NRS §§ 608.040 and 608.050,
13 such penalties attach when an employer fails to timely pay a discharged employee’s wages,
14 permitting such “employees to collect up to 30 days of wages at their regular rate.” *Id.* at *4
15 (emphasis removed). Because the district court determined that both statutes’ use of the word
16 “wages” did not refer to statutorily-required overtime pay, it held that waiting-time “penalties are
17 therefore limited to the contractually agreed upon rate of pay, which necessarily does not
18 include” overtime pay. *Id.* at *5.

19 On appeal, the Ninth Circuit merely “conclude[d] that overtime pay is a form of wages
20 under Nevada law.” *Evans*, 656 F. App’x at 882. The court thus held that the plaintiff was “also
21 entitled to seek waiting time penalties under [NRS] § 608.050.” *Id.* at 883.

22 At no point did either the district court or Ninth Circuit raise, let alone analyze, whether
23 NRS Chapter 608 creates a private right of action. Moreover, the district court specifically
24 distinguished between cases addressing that issue and the issue of waiting-time penalties the
25 parties raised at summary judgment:

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28 ³ Plaintiffs in the instant case have also sought waiting-time penalties. ECF No. 47 at 16.

1 The cases cited by plaintiff deal with the question of whether there exists a private
2 right of action to enforce the payment of overtime under N.R.S. § 608.018. They
3 do not squarely address whether waiting time penalties are available for unpaid
4 overtime under N.R.S. §§ 608.040 or 608.050. The only case cited by either party
5 which does address those provisions in this context is this court's decision in
6 *Orquiza [v. Walldesign, Inc., 2012 WL 2327685 (D. Nev. June 19, 2012)]*.

7 *Evans*, 2014 WL 298632, at *5 n. 1.

8 Nonetheless, Plaintiffs argue that the similarity of facts between their case and *Evans*, as
9 well as the fact that the *Evans* plaintiffs brought a private action, establishes that NRS Chapter
10 608 creates a private right of action. This argument, however, is without merit. The Ninth
11 Circuit's decision in *Evans* is unpublished and thus non-binding and, most importantly, does not
12 address or analyze the issue that Plaintiffs assert and therefore lacks any precedential value in
13 this context. *See M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1088 (9th Cir. 2012) ("Statements
14 made in passing, without analysis, are not binding precedent."); *O'Neal v. Price*, 531 F.3d 1146,
15 1152 at n. 6 (9th Cir. 2008) ("Statements 'made casually and without analysis,' which do not
16 address issues brought to the attention of the court, do not constitute precedent.").

17 The court therefore finds that Plaintiffs have provided no basis for relief under Rule 60(b)
18 and their motion for reconsideration will be denied.

19 **IV. Conclusion**

20 IT IS THEREFORE ORDERED that Plaintiffs' motion to reconsider this court's January
21 12, 2016 order (ECF No. 194) is **DENIED**.

22 IT IS SO ORDERED.

23 DATED this 15th day of February, 2017.

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25 LARRY R. HICKS
26 UNITED STATES DISTRICT JUDGE
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